Exhibit #50

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To: Loretta Young/EH/DOE@EH
cc:

Subject: Comments on 10 CFR 852

Ms. Young,

Attached are comments on 10 CFR Part 852 prepared by me on behalf of Legal and Risk Management, Bechtel Jacobs Company LLC, Oak Ridge, TN. If you have any questions, please call me at 865-241-4177. Thank you.

<<BJC_Comments to 10 CFR 852.doc>>

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Comments to Proposed Rules, 10 CFR 852
Prepared by Donna M. Coleman, Counsel

1. Proposed section 852.2 calls for a "State Agreement" between DOE and the State that sets forth the terms and conditions for dealing with an application for assistance under Subtitle D of the Act in filing a claims with the State workers' compensation system. While Ohio and Kentucky have workers' compensation systems where this agreement could arguably be put into place and serve the purpose intended under the rules, Tennessee has no state agency that could enter into such an agreement to implement the intent of the proposed rules.

   Tennessee has no administrative agency to make determinations of impairment or resolve disputes about causation, notice, or whether the claim was brought in a timely manner. All of the issues must be decided by a court of law. There are a few elements that can be placed before the Tennessee Department of Labor for resolution, but the processes are voluntary and it appears that the method of choice used by claimants to resolve benefit disputes with employers is the court system.

1. Proposed section 852.1(b) uses the term "toxic substance" as a criteria for the cause of the illness or death that is the basis of the application to the panel. Proposed section 852.6 refers to the criteria that should be used to determine the validity of a workers' compensation claim. All definitions and standards regarding illnesses and/or injuries eligible for compensation under Tennessee law should adhere strictly to the definitions, times, and conditions set forth in Tennessee Code Annotated §50-6-101, *et al.*

1. Proposed section 852.5 establishes the screening mechanism by which the Program Office determines whether to submit an application to a physicians panel. The Program Office should adhere strictly to state law standards regarding causality, particularly in situations involving occupational diseases. The standards should be no less stringent that those applied to any other industry worker covered under state workers' compensation laws. IN PARTICULAR, all standards for giving notice and presenting the claim within the time limits set by state law should be followed.

   Careful consideration should be given to the standards set by state law for causality. State laws and thresholds should be closely followed in determining whether claimants could have been equally exposed to conditions outside of his/her employment with DOE that might have caused the illness or death that is the subject of the claim. Special consideration should be given to relating disease, disease onset, and work history to each other. Just because a person worked at a particular site is not definitive of whether the claimant actually worked in an area at that site where he/she could have been exposed to conditions that might possibly lead to an illness or death. State causality standards as provided by law should be the guidelines that are followed in determining compensability.

1. Proposed section 852.7 should have the physician panel adhere strictly to state law criteria for their determination of causation. These criteria are established in law and have legislative and case law for applying the law uniformly among the citizens of the state. To set up a separate standard for one group of workers, creates a situation whereby confusion and uncertainty would exist for similarly situated workers and/or workers with similar conditions.

1. Proposed section 852.8 provides that each physicians panel will receive from the Program office a complete set of materials related to the claimant's diagnosis, medical history, work history, and history of exposures. An added element to this information could be the addition of an Independent Medical Examination to evaluate objectively the claimant's condition and its history, including relationship to claimant's work. It appears that in many instances this in depth physical examination might help to expedite the panel review by focusing on information relevant to determining compensability under state law.

1. §852.18 (BWXT Y-12 Comments made by Bob Stivers. BJC reprints his comment below for agreement and emphasis of the problem created by this section of the proposed rules):

> With regard to Subsection .18, and particularly with regard to (b) and (c) of that Subsection, the proposed rule is excessive in its nature, and could produce an unintended result in Tennessee. Under Tennessee law, even if causation were accepted, the employer and employee must still reach an agreement, or ask a Court to determine, what permanent disability, if any, should be awarded, and any agreement must be approved by a Trial Court. Under the proposed rule, since all costs associated with the matter after acceptance by the DOE Program Office could be determined to be unallowable, contractors will not participate further in the process. As a result , there will be no party in place who will be paid to decide how much disability is to be paid, participate in the decision as to the rate or which employer should be paying the benefits or getting an approval for a logical award. If the proposed rule directed that any costs to contest causation of the occupational disease would be unallowable, but the other normal costs for determining workers' compensation benefits would be allowable, this provision would be logical and useful under Tennessee law. Additionally, it will be necessary to have an agreed modification of the contract before any such rule could be effective, since all workers' compensation costs are allowable under this contract.